J. 713. There seems to have been a tendency during the past few years to allow a recovery where the article manufactured, while not inherently dangerous, will, if not properly constructed, be dangerous to life or health. *MacPherson* v. *Buick Motor Co.*, 217 N. Y. 382; *Johnson* v. *Cadillac Motor Car Co.*, 261 Fed. 878. A very valuable and comprehensive review of this entire question will be found in 18 MICH. L. R. 676.

TRIAL PRACTICE—DUTY OF COURT TO INSTRUCT.—The trial court refused to give certain requests of the plaintiff as instructions. On appeal the plaintiff complained of this action, while the defendant contended that since it did not appear from the record that the plaintiff had presented any requests to instruct, he could not now contend that there was error at the trial. *Held,* that the court is under a duty to instruct generally upon the issues raised, even in the absence of any requests to instruct. *Sutherland* v. *Payne,* 274 Fed. 360.

The original common law rule was that the judge was under an obligation, when charging the jury, to sum up the evidence produced on both sides and to explain the law of the subject and its application to the particular case. BRICKWOOD'S SACKETT, INSTRUCTIONS (Ed. 3), Sec. 153. Statutory modifications of this rule are quite general in this country, but, aside from these, there has come about a decided diversity of judicial opinion as to the duty of the trial court to instruct the jury when not requested so to do. In accord with the principal case, see *Central R. R.* v. *Harris,* 76 Ga. 501; *Mariner* v. *Smith,* 66 Tenn. 423; *Capital City Brick and Pipe Co.* v. *Des Moines,* 136 Ia. 243; *Pierson* v. *Smith,* 211 Mich. 292. In *Owen* v. *Owen,* 22 Ia. 270, it is said: "It may be said that the counsel did not request instructions, and that therefore it was not obligatory on the court to give any. Such a view does not accord with our conception of the functions and duties of the judge. He should see that every case goes to the jury so that they have clear and intelligent notions of precisely what it is that they are to decide." At least, it is not reversible error for a trial court of its own motion to instruct the jury. *Carey* v. *Callan's Ex'r,* 45 Ky. 44. The other extreme is that the court is under no duty to present instructions to the jury unless requested. *Tetherow* v. *St. Joseph & Des Moines Ry. Co.,* 98 Mo. 74; *Burkholder* v. *Stahl,* 58 Pa. 371; *T. & P. Ry. Co.* v. *Volk,* 151 U. S. 73; *Stuckey* v. *Fritsche,* 77 Wis. 329; *Sears* v. *Atlantic C. L. R. Co.,* 178 N. C. 285. As expressed in *Owens* v. *Owens, supra,* the theory that the judge should instruct, though no requests are presented, is more consonant with the idea of the duties and functions of a judicial officer. It may be conceded that in most cases it is negligence for an attorney to fail to submit requests, yet the one who suffers by the contrary rule is not, primarily, the attorney, but the innocent client. While in matters of drawing pleadings, in introducing evidence, and in many other ways, the conduct of his case is in the hands of the attorney, and the client must suffer for his neglect or inefficiency, here, it would seem, is a case where the court should properly do its utmost to see that justice is done both parties. It seems almost self-evident to say that the public maintains courts, not in order that appellate

courts may theorize on matters of waiver and negligence in the conduct of causes in court, but that the jury may render a just verdict on the issues presented by the pleadings and evidence. Yet that consideration seems to be overlooked too often. Nor is it extreme to say that by submitting evidence to sustain his side of the issues raised by the pleadings an attorney is impliedly requesting the court to submit the correct law on the issues thus presented. Of course, if a court has failed to instruct, or has instructed voluntarily but erroneously, and a verdict consistent with the law and evidence is obtained, a reversal should not be granted for that reason. *Ford* v. *Lacey,* 30 L. J. Ex. 351. Where a trial court has made a reasonable effort to present the law bearing on the issues, and a slight error has been committed, the cases are all in accord that, unless a party has made a request which would, if granted, have obviated such error, he is in no position to complain. This question may arise where some minor phase of the evidence has been overlooked by the judge or where unintentionally some phase of the adversary's case has been given undue prominence. *N. P. R. R. Co.* v. *Mares,* 123 U. S. 710; *U. S.* v. *Goodloe,* 204 Ala. 484; *Livingstone* v. *Dole,* 184 Ia. 1340; *Mahiat* v. *Codde,* 106 Mich. 387. There is good reason for this, as pointed out in 2 THOMPSON, TRIALS (Ed. 2), Sec. 2341: "* * * A party cannot, by merely excepting to a charge, make it the foundation for an assignment of error that it is indefinite or incomplete. The facts of the case come to the mind of the judge as matters of first impression, and it will often be extremely difficult for him in the short time allowed for a trial before a jury, and in the midst of such a trial, to prepare a series of instructions applicable to all the hypotheses presented by the evidence. * * *"

TRIAL PRACTICE—PLAINTIFF'S RIGHT TO DISMISS.—In a suit in equity, after a hearing had been had before the chancellor, and he had found that complainant had no grounds for equitable relief, complainant sought to dismiss, and was refused. The defendant insisted that final judgment be rendered. This course was adopted below. On appeal, questioning the refusal to allow complainant to withdraw, *held,* a litigant has no absolute right to discontinue an action without the sanction of the court, either at law or in equity. *Beaver* v. *Slane* (Pa., 1921), 114 Atl. 509.

It is often said that a plaintiff has an absolute right to dismiss his action before a certain stage in the trial has been reached. After verdict, the rule, almost without exception, is that a voluntary dismissal cannot be had. See cases, 18 C. J. 1153. There is a contrariety of opinion as to when that stage has been reached before verdict. At common law, originally, suit could be dismissed as a matter of right at least before verdict rendered. *Hamlin* v. *Walker,* 228 Mo. 611. This rule apparently survives. *Oil Co.* v. *Shore,* 171 N. C. 51; *Deneen* v. *Houghton County St. Ry. Co.,* 150 Mich. 235; *U. S.* v. *N. & W. Ry. Co.,* 118 Fed. 554. Until the jury retires the plaintiff has an absolute right of dismissal. *Burke* v. *Chicago City Ry. Co.,* 109 Ill. App. 656. The right is absolute before a trial on the merits is begun. *New Hampshire Banking Co.* v. *Ball,* 57 Kan. 812; *Heineman* v. *Van Stone,* 68 N. Y. S. 803; *McQuesten* v. *Commonwealth,* 198 Mass. 172. After such arbitrarily